

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF TENNESSEE  
AT KNOXVILLE

UNITED STATES OF AMERICA,	)	
	)	
Plaintiff,	)	
	)	
v.	)	No.: 3:08-CR-48-TAV-CCS-9
	)	
PORFIRIO ROJAS,	)	
	)	
Defendant.	)	

**ORDER**

This criminal case is before the Court on the Report and Recommendation entered by United States Magistrate Judge H. Bruce Guyton on July 30, 2015 (the “R&R”) [Doc. 563]. In the R&R, Magistrate Judge Guyton recommends that the Court accept petitioner Rojas’s withdrawal of his motion to vacate, set aside, or correct his sentence pursuant to 28 U.S.C. § 2255, and dismiss the § 2255 petition.<sup>1</sup> Magistrate Judge Guyton further recommends that no certificate of appealability issue for this case because petitioner Rojas is no longer pursuing his constitutional claims for ineffective assistance of counsel. There have been no timely objections to the R&R, and enough time has passed since the filing of the R&R to treat any objections as having been waived. *See* 28 U.S.C. § 636(b)(1); Fed. R. Civ. P. 72(b); Fed. R. Crim. P. 51.

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<sup>1</sup> Judge Guyton states that prior to the scheduled evidentiary hearing in this case, petitioner’s counsel informed the Court that petitioner is nearing the end of his sentence and would prefer to seek relief in the form of a motion to reduce his sentence to Amendment 782 to the United States Sentencing Guidelines Manual, also known as the “Drugs Minus Two Amendment.” Petitioner’s attorney in the § 2255 action has subsequently been appointed to represent petitioner in filing his motion to reduce his sentence pursuant to Amendment 782 [Doc. 565].

After a careful review of the R&R, the Court is in agreement with Magistrate Judge Guyton's analysis and recommendations, which the Court adopts and incorporates into its ruling. Therefore, the Court **ACCEPTS IN WHOLE** the R&R [Doc. 563]. In light of petitioner's withdrawal of his motion to vacate, set aside, or correct his sentence pursuant to 28 U.S.C. § 2255, petitioner's § 2255 action is hereby **DISMISSED**. No certificate of appealability shall issue, because petitioner is no longer pursuing his constitutional claims of ineffective assistance of counsel.

IT IS SO ORDERED.

s/ Thomas A. Varlan  
CHIEF UNITED STATES DISTRICT JUDGE